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CONCORD, N.H.

Mr. John Langmuir
Administrative Assistant
Governor's Office
State House

Dear Mr. Langmuir:

You have inquired as to whether or not the Board of Trustees of the Industrial School may create new jobs and hire personnel to fill the positions so created without regard to the Personnel Act, Chapter 9 of the Laws of 1950.

Revised Laws chapter 463 is the basic statute concerning the Industrial School. The Industrial School was created by the Legislature as a corporation, (R. L. chapter 463, section 1), under the general management and supervision of a Board of Trustees. Revised Laws chapter 463, section 2 provided for supervisory authority over the Trustees by the Governor and Council. Revised Laws chapter 14 also provided for general supervision and control of all state institutions by the Governor and Council. This basic control has been retained in the Re-organization Act, Laws of 1950, chapter 5, part 11, section 5, which amends Revised Laws, chapter 14, section 1. See also section 8, chapter 5, part 11, Laws of 1950 which provides that the Board of Trustees of the Industrial School shall appoint the executive head of the school subject to the approval of the Governor and Council.

All of the above is cited to indicate that although the Board of Trustees is generally charged with the management of the Industrial School they are not entirely free to administer the school without regard to statutes other than Revised Laws, chapter 463.

The Personnel Act, Revised Laws, chapter 27-B as added by Laws of 1950, chapter 9, shows a legislative intent to place all state personnel, with certain well defined exceptions, under the control of the Division of Personnel created therein. Section 1 of chapter 27-B

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provides that the "recruitment, appointment, compensation, promotion, transfer, lay-off, removal and discipline of state employees" and "other incidents of state employment" are under the jurisdiction of the Personnel Commission. The Personnel Commission has the duty and power to make rules and regulations. R. L. chapter 27-B, section 6, subdivision III. The Director of the Division of Personnel has the duty of prescribing rules for classified service for the recruitment and selection of personnel. R. L. chapter 27-B, section 10, subdivision X. The director is further charged with the development of a program for recruitment, selection and placement of applicants for positions in state classified service. The state classified service embraced by chapter 27-B includes "all positions in the state service now existing or hereafter established . . .". R. L. chapter 27-B, section 18. The only exceptions to this all inclusive category are:

1. Persons elected by popular vote or by the Legislature.
2. Members of the Tax Commission.
3. Persons appointed and commissioned by the Governor and Council.
4. The chief executive officer of each department, institution or independent agency.
5. The deputy of any department head provided for by special statute except deputies of the departments or agencies receiving federal grants-in-aid.
6. Officers whose salaries are specified or provided by special statute.
7. Personnel of the University of New Hampshire.

Section 2 of chapter 9, Laws of 1950 provides for the repeal of certain specific statutes. Section 2 further states "All other acts or the parts of acts inconsistent with this act are hereby repealed to the extent of such inconsistencies . . ." Although repeal by implication, or a general repealing clause of this nature are not desirable, it is our feeling that the inauguration of the State Personnel System brings with it an entirely new concept regarding the hiring of personnel for state government service, i.e., all state personnel, with the enumerated exceptions shall be hired through the Division of Personnel rather than the individual department or agency employing the person, consequently to properly follow out the intent of the Legislature, the Personnel Act must be considered paramount to other statutes in the personnel area of state government.

It is our opinion that all personnel hired for state service must be hired through the Division of Personnel, that all new positions must be established by the employing agency or department in conjunction with the Division of Personnel or by act of the Legislature. In view of the above, we are of the opinion that The Board of Trustees of the Industrial School may not create new positions and fill them without regard to the Personnel Act.

Very truly yours,

Henry Dowst, Jr.,
Assistant Attorney General

HD:RM